

*Held*, the vendor or his assigns had the legal right (the purchase money being in arrear and unpaid), to enter upon the premises in order to resume actual possession of the machinery, giving notice and using all care in so doing, but that it would be illegal for him to take possession by force, and an injunction might properly issue to restrain acts of force on the behalf of the vendor, but only on the terms that the vendee be likewise enjoined from using force to interfere with the rights of the vendor, but the vendor should first give such security as is usual on replevin before taking possession of the machinery.

*Lash*, Q.C., and *Lefroy*, for the plaintiffs.

*Hoyles*, for the defendants.

BOYD, C.]

[Dec. 5, '89.

TOWNSLEY v. BALDWIN.

*Mechanics Lien—Action by sub-contractor—Demurrer—Necessity of averment that something is due to the contractor.*

Demurrer to statement of claim in an action by a sub-contractor to enforce a mechanic's lien, upon the ground that there was no averment that anything was due from the land owner to the contractor.

*Held*, that the demurrer should be allowed. If no amount is owing from the owner to the contractor there is no lien in favour of the sub-contractor.

*Dr. Snelling*, for the plaintiff.

*J. F. Edgar*, for the defendant Adams.

BOYD, C.]

[Dec. 18, 1889.

RE MCCAULEY AND CITY OF TORONTO.

*Municipal Corporations—Expropriation of land—Lands injuriously affected—Loss of good-will as ground for compensation.*

Appeal from arbitrators' award.

*Held*, that though *Ricketts' case*, L.R. 2, H.L. 175, decided that in a case where land is not compulsorily taken but only injuriously affected, injury resulting from diminution of good-will pertaining to business carried on upon the premises is not an element of compensation, yet it is well settled law that where the land itself upon which the trade is carried on is expropriated, damage to the good-will may be a proper subject of compensation; and since here the whole of the appellant's land on which

he had conducted his business for some twelve years, had been taken, the evidence tendered as to loss sustained by injury to his good-will is admissible, and its effect should have been considered by the arbitrators, and for this purpose the award must be remitted to them.

*Lash*, Q.C., for the appeal.

*Biggar* and *Worrell* contra.

BOYD, C.]

[Dec. 19, '89.

ROUTLEY v. HARRIS.

*Slander—Charging offence punishable by imprisonment—Crime—Malicious injury to property—R.S.C., c. 168, s. 26, 27, 58, 59.*

*Held*, upon demurrer to a statement of claim, that any defamatory charge referable to wrongdoing under the 26th and 58th sections of the Act relating to malicious injuries to property, R.S.O., c. 168, would be actionable without special damage, inasmuch as those sections impose the penalty of imprisonment for the offences therein provided for, but that if such defamation imputed wrongdoing under the 27th or 59th sections of that Act, that special damage must be alleged in as much as those sections merely impose a fine upon persons liable under them.

*Aylesworth*, for the demurrer.

*Folingsbee*, contra.

BOYD, C.]

[Dec. 19, 1889.

DAWSON v. FRASER.

*Will—Construction—Maintenance—Vested interest—Death of party entitled to maintenance.*

When a will gave the rents of the testator's farm for the support and maintenance of "the family now at home," and directed that the said rents should be so applied till the youngest surviving child came of age, and it appeared that one of the children so entitled to a share of the rents had died although the youngest surviving child had not yet come of age,

*Held*, that the share of the deceased child in the rents devolved upon her personal representatives.

The distinction is marked in the cases between those where a provision is made for maintenance of indefinite duration and those where the duration is defined by the testator. In the former case the provision will not be carried beyond the life of the beneficiary, in the latter it